HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G. BHAVANI PRASAD

WRIT APPEAL NO. 365 OF 2006

AND

WRIT PETITION NO.4530 OF 2006

BETWEEN

D. Rama Rao

.....Appellant

And

Government of Andhra Pradesh rep. by its Secretary, Endowment Department, Hyderabad & others

.....**Respondents**

:: JUDGMENT ::

Counsel for the Appellant : Shri G. Vidya Sagar

Counsel for Respondents : Government Pleader for Endowments

Dated: 06.04.2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 09.03.2006 passed by the learned Single Judge in W.P.M.P.No.5706 of 2006

in Writ Petition No.4530 of 2006.

A perusal of the record shows that on an application made by the appellant, which was forwarded by Administrative Officer of Sri Swamy Hathi Ramji Mutt, Tirupati, the Commissioner of Endowments, Andhra Pradesh (respondent No.2) sanctioned grant of lease in his favour in respect of the dormitory halls constructed sometime in 2004. The appellant is said to have deposited the lease amount of Rs.3,50,000/- and started letting out the dormitories w.e.f. 14.05.2005. The tenure of the lease sanctioned in his favour was three years. However, after about seven months, the State Government, vide proceedings dated 10.02.2006, cancelled the lease on the ground that the same had been granted in violation of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and other Rights (other than Agricultural lands) Leases and Licenses Rules, 2003 (for short 'the Rules').

The appellant challenged the decision of the State Government in Writ Petition No.4530 of 2006. He pleaded that the impugned decision is liable to be declared as vitiated due to violation of the rules of natural justice, inasmuch as he had not been given notice and opportunity of hearing.

Along with the writ petition, the petitioner filed WPMP No.5706 of 2006 with the prayer that operation of decision dated 10.02.2006 may be suspended.

In the counter filed by the respondents, it was averred that the decision to cancel the lease was taken by the State Government in exercise of its power under Section 121 of the

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'). It was further averred that final decision was taken after issuing show cause notice dated 09.11.2005 to the petitioner.

The learned Single Judge rejected the appellant's prayer for interim order by recording the following observations:

> "The State Government – 1st respondent took up consideration of the validity of the approval granted by the 2nd respondent in exercise of Suo Motu power under Section 121 of the AP Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') and issued a show cause notice on 09.11.2005 calling upon the petitioner to explain why the approval granted by the 2nd respondent of the lease in his favour by private negotiations be not terminated, inter alia, for violation of Rule 3(1) proviso of the AP Charitable and Hindu Religious Institutions and Endowments Properties and other Rights (other than Agricultural lands) Lease and Licenses Rules, 2003 (for short 'the Rules').
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> The Rules were issued in G.O.Ms.No.866, Revenue (Endts.1) dated 08.08.2003 in purported exercise of powers under Section 82 read with Section 153(1) of the Act. The proviso to sub-rule (1) of Rule 3 of the Rules stipulates that the normal mode of leases and licenses being granted by way of public auction can be departed from, provided the Commissioner is satisfied for reasons to be recorded in writing that the interests of the institution or endowment will not suffer thereby and on recording the satisfaction in writing, the lease of any property, otherwise than by public auction could be pursued.

After receiving the explanation of the petitioner dated 28.11.2005, by the impugned order in G.O.Rt.No.310, Revenue (Endowments .II) Department, dated 10.02.2006, the 1st respondent inter alia found that the approval of the lease in favour of the petitioner granted by the 2nd respondent was in transgression of the statutory requirement of Rule 3(1) of the Rules; that the 2nd respondent failed to record any reasons spelling out his satisfaction why the lease ought to be granted otherwise by public auction and accordingly cancelled the proceedings granting lease in favour of the petitioner. The petitioner had, under the terms of the lease earlier granted to him, tenure of three years commencing from 14.05.2005. He complains that his lease is terminated midway. The complaint is factually correct, but the legal foundation for the impugned State action appears prima facie impeccable as well.

Another contention of the learned counsel for the petitioner is that one of the reasons recorded by the 1st respondent for terminating the lease in favour of the petitioner is that the lease in his favour was 'against public interest and not in the best interests of the institution' i.e. the 3rd respondent. Learned counsel for the petitioner contends that the 1st respondent did not have any independent material to come to the conclusion that the lease granted in favour of the petitioner by the approval granted by the 2nd respondent was not in public interest or in the best interests of the institution and that the only material available was the report of the 3rd respondent which indicated that the institution was not getting a fair return on its investment and that it is in the interests of the institution that the lease be granted by private

negotiations.

The order of the 1st respondent is a quasi-judicial order. It is not an order based on subjective satisfaction, but on objective evaluation of relevant facts. It is a well-settled principle in Administrative Law that where there are a plurality of reasons recorded for arriving at a decision and some of the reasons recorded are found to be defective or unsustainable, even so the eventual decision need not be set at naught if the surviving legitimate reason is adequate to sustain the eventual decision vide **State of Orissa v. Bidya Bhushan {AIR 1963 SC 779}**. This principle is too well established in Administrative Law.

Prima facie, as the violation by the 2nd respondent of the statutory requirement of recording reasons is a fatal flaw, the order of the 1st respondent impugned in the writ petition recording that reason i.e. of the fatality of the 2nd respondent's order is an adequate and germane reason to sustain the eventual decision of the 1st respondent, therefore, this contention of the petitioner does not assume much significance to justify the invalidation of the impugned order."

At the commencement of hearing, Shri G. Vidya Sagar, learned counsel for the appellant fairly stated that the permission granted by the Commissioner vide D.Dis.No.M2/18037/2005, dated 27.04.2005 was not in accordance with Rule 3(1) of the Rules and submitted that the Court may dispose of this appeal as also Writ Petition No.4530 of 2006 by directing the concerned authority to grant lease by auction and till then his client may be permitted to operate the lease.

Learned Government Pleader agreed that the Court may ordain the grant of lease by way of public auction in accordance with Rule 3(1) of the Rules.

In view of the statements made by learned counsel for the parties, we do not consider it necessary to examine the correctness of order under challenge, and dispose of the appeal as well as Writ Petition No.4530 of 2006 with the following directions:

(1) within two months from today, the concerned authority shall lease out the property in question by way of public auction;

(2) the lease shall be granted to the highest bidder, subject to fulfillment of other conditions laid down in the Act and the Rules;

(3) for a period of two months, the appellant-petitioner shall be allowed to operate the lease, provided that possession is still with him. This would necessarily mean that if the possession has already been taken over by the management of Mutt (respondent No.3), this order will not entitle the appellant to regain the possession;

(4) if the appellant gives highest bid in the auction to be held hereinafter, he will be entitled to grant of fresh lease subject, of course, to the fulfillment of other conditions. If the bid of the appellant is not highest, then he shall have to hand over the vacant possession of the property of the management of the mutt and he shall not be entitled to file any litigation for retaining the possession of the property;

(5) if, as a result of fresh auction, lease is not granted to the appellant-petitioner, he shall be entitled to refund of the proportionate amount already deposited by him.

As a sequel to the disposal of the writ appeal, as also Writ

Petition No.4530 of 2006 in the manner indicated above, WAMP No.784 of 2006 filed by the appellant for grant of interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

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